



February 22, 2005

HOUSE BILL No. 1406

DIGEST OF HB 1406 (Updated February 18, 2005 3:23 pm - DI 14)

Citations Affected: IC 7.1-2; IC 7.1-3; IC 7.1-4; IC 7.1-5.

Synopsis: Alcoholic beverage matters. Removes a requirement that the prosecutor of the alcohol and tobacco commission (commission) be a state resident and member of the bar for at least five years before the appointment. Increases the term of a retailer or dealer's permit to two years (instead of one year). Increases the following permit fees: (1) One-way retailer's or dealer's permit to \$750 biennially. (2) Two-way retailer's or dealer's permit to \$1,250 biennially. (3) Three way retailer's or dealer's permit to \$2000 biennially. Changes the distribution of the excise fund to provide that 40% of the fund is deposited in the enforcement and administration fund (fund), 25% is distributed to the state general fund, and 25% is distributed to municipal governments. Provides that 50% of other alcoholic beverage permit fees are deposited in the fund. Eliminates the requirement that the commission publish notice of a new retailer or dealer's permit and notice of investigation. Allows a beer retailer to permit customers to sample beer and flavored malt beverages. Allows a liquor retailer or dealer to allow customers to sample flavored malt beverage. Requires all alcoholic beverage sales by a drug store or a grocery store to be by or under the direct supervision of a person who holds an employee's permit. Makes the following changes with respect to a supplemental retailer's permit: (1) Eliminates the gross food sales requirement. (2) Makes all supplemental retailer permits \$3,000 biennially. (3) Increases the term of a permit to two years. Increases the fee for a temporary bartender's (Continued next page)

Effective: Upon passage; July 1, 2005.

Whetstone, Kuzman

January 13, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.
February 21, 2005, amended, reported — Do Pass.

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permit to ten dollars. Increases the fee for a tobacco certificate to \$200 and the term of a certificate from one to three years. Increases the fee for an employee's permit used to perform volunteer service from \$5 to \$15. Provides that the alcohol and tobacco commission may suspend a permit if the permit holder has not paid the seller of the permit in accordance with the terms of the sale and the seller has obtained a judgment. Allows the alcohol and tobacco commission (commission) to issue a three-way permit to a restaurant in an economic development district in Jeffersonville and Clarksville. Provides that fees collected for the issuance of a permit are deposited in the enforcement and administration fund of the commission. Makes it a Class A infraction for a person to sell or distribute tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate. Provides that if a primary source of supply acquires the rights to a product and decides not to have a beer wholesaler continue to distribute the product, the wholesaler must be compensated for the loss of the right to distribute the product or the wholesaler will continue to distribute the product. Allows a beer wholesaler to offer a special discount price to a beer dealer or beer retailer if the beer or flavored malt beverage is a brand or package the beer wholesaler has discontinued or the beer or flavored malt beverage will expire within a certain date. Allows a manufacturer of alcoholic beverages to offer on a nondiscriminatory basis bona fide incentives to wholesalers if the incentives are determined based on sales to retailers or dealers occurring during specified times and for specified products. Repeals provisions concerning publication of notice and food sales requirements for issuance of a supplemental retailer's permit.

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February 22, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1406

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-2-2-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~Qualifications~~
3 ~~and Appointment~~. The prosecutor shall be appointed by the governor
4 for a term of four (4) years to be served at the pleasure of the governor.
5 The prosecutor shall be a resident of the state and a practicing member
6 of the Indiana bar. ~~for at least five (5) years preceding his appointment.~~
7 SECTION 2. IC 7.1-3-1-3 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A permit of
9 any type issued by the commission, except as provided in subsections
10 (b) and (f) or unless otherwise provided in this title, shall be in force
11 for one (1) calendar year only, including the day upon which it is
12 granted. At the end of the one (1) year period the permit shall be fully
13 expired and null and void.
14 (b) Notwithstanding subsection (a), in a county containing a
15 consolidated city, a permit that is subject to section 5.5 or 5.6 of this
16 chapter is effective for two (2) calendar years, including the day upon
17 which the permit is granted. However, a local board may recommend

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to the commission that the permit be issued or renewed for only a one (1) year period. The commission may issue or renew a permit for the period recommended by the local board.

(c) A permittee who is granted a two (2) year permit under subsection (b) or subsection (f) is liable for any annual fees assessed by the commission. The annual fee is due on the annual anniversary date upon which the permit was granted.

(d) If the commission grants a two (2) year permit, the commission may ask a local board to hold a hearing to reconsider the duration of a permittee's permit. A hearing held under this subsection is subject to section 5.5 or 5.6 of this chapter. A local board shall hold the hearing requested by the commission within thirty (30) days before the permittee's next annual anniversary date and forward a recommendation to the commission following the hearing.

(e) If a permittee is granted a permit for more than one (1) year, the commission may require the permittee to file annually with the commission the information required for an annual permit renewal.

(f) Notwithstanding subsection (a), the following are effective for two (2) calendar years, including the day upon which the permit is granted:

(1) A beer wholesaler's permit issued under IC 7.1-3-3-1.

(2) A wine wholesaler's permit issued under IC 7.1-3-13-1.

(3) A liquor wholesaler's permit issued under IC 7.1-3-8-1.

(4) A beer, wine, or liquor retailer or dealer's permit.

SECTION 3. IC 7.1-3-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. ~~Applications for Permits: Disclosures.~~ An application for a permit to sell alcoholic beverages of any kind ~~and the required publication of notice,~~ shall disclose the name of the applicant and the specific address where the alcoholic beverages are to be sold, and any assumed business name under which the business will be conducted. The application ~~and notice~~ also shall disclose the names and addresses of the president and secretary of the corporation, club, association or organization who will be responsible to the public for the sale of the alcoholic beverage if the applicant is a corporation, club, association, or other type of organization.

SECTION 4. IC 7.1-3-4-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a) A beer retailer may allow customers to sample beer and flavored malt beverages.**

(b) Sampling is allowed only:

(1) on the beer retailer's permit premises; and

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(2) during the beer retailer's regular business hours.

(c) A beer retailer may not charge for samples provided to the customers.

(d) A sample size of beer or flavored malt beverage may not exceed six (6) ounces.

SECTION 5. IC 7.1-3-5-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section applies to the holder of a beer dealer's permit who is the proprietor of a drug store or grocery store.

(b) All beer sales must be made by or under the direct supervision of at least (1) employee of the holder who holds an employee's permit issued under IC 7.1-3-18.

SECTION 6. IC 7.1-3-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. ~~Three-Way Permits.~~ The commission may issue a liquor retailer's permit only to a person who also is, and continues to be, the holder of both a beer retailer's permit and a wine retailer's permit. However, applications for each of the three (3) types of permits may be made at the same time or in one (1) application combining requests for each of the three (3) types of permits. ~~The publication of the notice of the applications may be combined; in any case, if the applications are pending simultaneously. The notices also may be combined in one (1) publication with notices of the application of other applicants for a permit.~~

SECTION 7. IC 7.1-3-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) A liquor retailer may allow customers to sample the following:

(1) Beer.

(2) Flavored malt beverage.

~~(2) (3) Wines.~~

~~(3) (4) Liquors.~~

~~(4) (5) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).~~

(b) Sampling is permitted only:

(1) on the liquor retailer's permit premises; and

(2) during the permittee's regular business hours.

(c) A liquor retailer may not charge for the samples provided to customers.

(d) Sample size of wines may not exceed one (1) ounce.

(e) In addition to the other provisions of this section, a liquor retailer who allows customers to sample liquors, liqueurs, or cordials shall comply with all of the following:

(1) A liquor retailer may allow a customer to sample only a

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combined total of two (2) liquor, liqueur, or cordial samples per day.

(2) Sample size of liqueurs or cordials may not exceed one-half (1/2) ounce.

(3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

(f) A sample size of beer may not exceed six (6) ounces.

(g) A sample size of flavored malt beverage may not exceed six (6) ounces.

SECTION 8. IC 7.1-3-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) A liquor dealer permittee who is a proprietor of a package liquor store may allow customers to sample the following:

(1) Beer.

(2) Flavored malt beverage.

~~(2)~~ (3) Wines.

~~(3)~~ (4) Liquors.

~~(4)~~ (5) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

(b) Sampling is permitted:

(1) only on the package liquor store permit premises; and

(2) only during the store's regular business hours.

(c) No charge may be made for the samples provided to the customers.

(d) Sample size of wines may not exceed one (1) ounce.

(e) In addition to the other provisions of this section, a proprietor who allows customers to sample liquors, liqueurs, or cordials shall comply with all of the following:

(1) A proprietor may allow a customer to sample not more than a combined total of two (2) liquor, liqueur, or cordial samples per day.

(2) Sample size of liqueurs or cordials may not exceed one-half (1/2) ounce.

(3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

(f) Sample size of beer may not exceed six (6) ounces.

(g) Sample size of flavored malt beverage may not exceed six (6) ounces.

SECTION 9. IC 7.1-3-10-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) **This section applies to the holder of a liquor dealer's permit who is the proprietor of a drug store or grocery store.**

(b) **All liquor sales must be made by or under the direct supervision of at least (1) employee of the holder who holds an**

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1 **employee's permit issued under IC 7.1-3-18.**

2 SECTION 10. IC 7.1-3-14-2 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~Prerequisites:~~
4 The commission may issue or refuse a wine retailer's permit, in its
5 discretion, with or without requiring an investigation before a local
6 board. ~~However, publication of notice need not be given if the~~
7 ~~commission does require an investigation before a local board.~~

8 SECTION 11. IC 7.1-3-15-4 IS ADDED TO THE INDIANA CODE
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: Sec. 4. (a) **This section applies to the holder of**
11 **a wine dealer's permit who is the proprietor of a drug store or**
12 **grocery store.**

13 (b) **All wine sales must be made by or under the direct**
14 **supervision of at least (1) employee of the holder who holds an**
15 **employee's permit issued under IC 7.1-3-18.**

16 SECTION 12. IC 7.1-3-16.5-2 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The
18 commission may issue a supplemental retailer's permit only to a person

19 (†) who is, and continues to be, the holder of a beer retailer's
20 permit, a liquor retailer's permit, or a wine retailer's permit.

21 (2) whose business:

22 (A) has had annual gross sales of food and beverages of at
23 least one hundred thousand dollars (\$100,000); of which at
24 least fifty percent (50%) was in the retail sale of food; or

25 (B) has had annual gross retail sales of food of at least one
26 hundred thousand dollars (\$100,000);

27 for the year immediately preceding the person's application for the
28 permit; and

29 (3) whose business operates during seven (7) or more months of
30 the year.

31 (b) Notwithstanding subsection (a), the commission may issue a
32 supplemental retailer's permit to a person whose business operates
33 during fewer than seven (7) months of the year if:

34 (†) the person is, and continues to be, the holder of a beer
35 retailer's permit, a liquor retailer's permit, or a wine retailer's
36 permit; and

37 (2) the person's business, for each month of business during the
38 year immediately preceding the application for a permit has had:

39 (A) average monthly gross sales of food and beverages of at
40 least eight thousand five hundred dollars (\$8,500); of which at
41 least fifty percent (50%) was in the retail sale of food; or

42 (B) average monthly gross retail sales of food of at least eight

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thousand five hundred dollars (\$8,500).

(c) Notwithstanding subsection (a), The commission may issue a supplemental retailer's permit to a person who meets the following requirements:

(1) Is the proprietor of a recreational facility such as a golf course, bowling center, or similar facility.

(2) Has the recreational activity and not the sale of food and beverages as the principal purpose or function of the person's business.

(3) Is, and continues to be, the holder of a beer retailer's permit, a liquor retailer's permit, or a wine retailer's permit.

(4) Has had at the person's business annual gross sales of food and beverages of at least twenty-five thousand dollars (\$25,000), of which at least twelve thousand five hundred dollars (\$12,500) was in the retail sale of food.

(d) (b) The commission may issue a supplemental retailer's permit to a person who is, and continues to be, the holder of a farm winery permit under IC 7.1-3-12.

SECTION 13. IC 7.1-3-18-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The commission may issue a temporary bartender's permit to any person who is at least twenty-one (21) years of age for any of the following purposes:

(1) To be a bartender at any activity or event for which a temporary permit is issued under IC 7.1-3-6 (beer) or IC 7.1-3-16 (wine).

(2) To be a bartender at a nonprofit club for a maximum of four (4) days in a year during the same time that a fair or festival is held in the community where the club is located. However, the commission may only issue a maximum of twenty (20) temporary bartender's licenses for use in one (1) club during one (1) fair or festival.

(b) A temporary bartender's permit is the only license that is required for persons to serve as bartenders for the purposes described in subsection (a).

(c) A temporary bartender at a club may dispense any alcoholic beverage that the club's permit allows the club to serve.

(d) The fee for a temporary bartender's permit is ~~four~~ **ten** dollars ~~(\$4)~~ **(\$10)**.

(e) The commission may by rule provide procedures for the issuance of a temporary bartender's permit.

(f) The commission shall revoke a permit issued to a bartender

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under this section if the bartender is convicted of a Class B misdemeanor for violating IC 7.1-5-10-15(a).

SECTION 14. IC 7.1-3-18.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A person who desires a certificate must provide the following to the commission:

(1) The applicant's name and mailing address and the address of the premises for which the certificate is being issued.

(2) A fee of ~~fifty dollars (\$50)~~; **two hundred dollars (\$200)**.

(b) A separate certificate is required for each location where the tobacco products are sold or distributed.

(c) The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

SECTION 15. IC 7.1-3-18.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A certificate issued by the commission under this chapter must contain the following information:

(1) The certificate number.

(2) The certificate holder's name.

(3) The permanent location of the business or vending machine for which the certificate is issued.

(4) The expiration date of the certificate.

(b) A certificate is:

(1) valid for ~~one (1) year~~ **three (3) years** after the date of issuance, unless the commission suspends the certificate; and

(2) nontransferable.

SECTION 16. IC 7.1-3-18.5-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) As used in this section "tobacco retailer" means a person who sells or otherwise distributes tobacco products at retail.**

(b) A person who sells or distributes tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate issued by the commission commits a Class A infraction.

(c) Each violation of this section constitutes a separate offense.

SECTION 17. IC 7.1-3-19-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~Prerequisites:~~ The commission, unless otherwise provided in this title, shall not grant an application and issue a retailer's or dealer's permit of any type until ~~the publication of notice~~ the investigation before the local board and the other proceedings required by this chapter have been completed.

SECTION 18. IC 7.1-3-19-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. ~~New Permits~~

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in ~~Residential Districts. Exceptions:~~ The provisions of IC 7.1-3-19-13 ~~7.1-3-19-14~~, and 7.1-3-19-15 do not apply to the renewal of existing retailer's permits, nor to the renewal of existing liquor dealer's permits, nor to a nationally chartered veteran's organization which has occupied the same premises for ten (10) years prior to making application for a club permit.

SECTION 19. IC 7.1-3-20-13.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.5. Notwithstanding sections 12 and 13 of this chapter **and** IC 7.1-3-16.5-2(c), ~~and IC 7.1-3-16.5-3(c)~~, there is no annual or monthly gross food sales requirement to obtain a three-way permit or a supplemental retailer's permit for the sale of alcoholic beverages in a restaurant that is:

(1) open to the general public; and

(2) located on:

(A) the grounds of a regulation size golf course that has at least nine (9) holes; or

(B) the premises of a tennis club that has at least eight (8) regulation size tennis courts.

SECTION 20. IC 7.1-3-20-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) A permit that is authorized by this section may be issued without regard to the quota provisions of IC 7.1-3-22.

(b) The commission may issue a three-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant facility in the passenger terminal complex of a publicly owned airport which is served by a scheduled commercial passenger airline certified to enplane and deplane passengers on a scheduled basis by a federal aviation agency. A permit issued under this subsection shall not be transferred to a location off the airport premises.

(c) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a redevelopment project consisting of a building or group of buildings that:

(1) was formerly used as part of a union railway station;

(2) has been listed in or is within a district that has been listed in the federal National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended; and

(3) has been redeveloped or renovated, with the redevelopment or

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renovation being funded in part with grants from the federal, state, or local government.

A permit issued under this subsection shall not be transferred to a location outside of the redevelopment project.

(d) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant:

(1) on land; or

(2) in a historic river vessel;

within a municipal riverfront development project funded in part with state and city money. A permit issued under this subsection may not be transferred.

(e) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a renovation project consisting of a building that:

(1) was formerly used as part of a passenger and freight railway station; and

(2) was built before 1900.

The permit authorized by this subsection may be issued without regard to the proximity provisions of IC 7.1-3-21-11.

(f) The commission may issue a three-way permit for the sale of alcoholic beverages for on premises consumption at a cultural center for the visual and performing arts to a town that:

(1) is located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and

(2) has a population of more than twenty thousand (20,000) but less than twenty-three thousand (23,000).

(g) The commission may issue a three-way permit for the sale of alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within an economic development district under IC 6-1.1-39 that is designated by the fiscal body of:

(1) a town with a population of more than twenty thousand (20,000); or

(2) a city with a population of more than twenty-seven thousand (27,000) but less than twenty-seven thousand four hundred (27,400);

located in a county having a population of more than ninety thousand (90,000) but less than one hundred thousand (100,000).

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The commission may issue not more than five (5) licenses under this section to premises within each municipality. Notwithstanding any other law, the nonrefundable application fee for an initial license under this subsection is twenty-five thousand dollars (\$25,000), and the renewal fee for a license under this subsection is five thousand dollars (\$5,000). Before the district expires, a permit issued under this subsection may not be transferred. After the district expires, a permit issued under this subsection may be renewed, and the ownership of the permit may be transferred, but the permit may not be transferred from the permit premises.

SECTION 21. IC 7.1-3-23-43 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 43. (a) The commission may suspend the permit of a permit holder if:

- (1) the permit holder has not paid the person who sold the permit to the permit holder in accordance with the terms of the sale;
- (2) the seller of the permit receives a judgment against the permit holder in an action to obtain payment for the permit in accordance with the terms of the sale; and
- (3) the seller of the permit sends a certified copy of the judgment to the commission.

(b) Before suspending a certificate under this section, the commission shall provide written notice to the permit holder and conduct a hearing. The commission shall provide written notice of the suspension to the permit holder.

(c) If a person who sells a permit:

- (1) sends a judgment to the commission under subsection (a); and
- (2) subsequently receives full payment of the judgment;

the seller shall notify the commission in a manner prescribed by the commission that the seller has received full payment of the judgment not later than ten (10) days after receiving the payment.

SECTION 22. IC 7.1-3-25 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 25. Product Transfer Between Wholesalers

Sec. 1. As used in this chapter, "existing wholesaler" means a beer wholesaler who distributes a product at the time a successor primary source of supply acquires rights to a product under section 5 of this chapter.

Sec. 2. As used in this chapter, "product" means an existing

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brand of:

(1) beer (as defined in IC 7.1-1-3-6); or

(2) flavored malt beverage (as defined in IC 7.1-1-3-16.7).

Sec. 3. As used in this chapter "successor" means a primary source of supply that acquires rights to a product under section 5 of this chapter.

Sec. 4. As used in this chapter, "successor's designee" means one (1) or more beer wholesalers designated by a successor to replace the existing wholesaler, for all or part of the existing wholesaler's territory, in the distribution of the existing product.

Sec. 5. A successor:

(1) who acquires the rights to manufacture or distribute an existing product; and

(2) who:

(A) does not reappoint the existing wholesaler to distribute the product;

(B) reduces the existing wholesaler's territory for the product; or

(C) offers to compensate the existing wholesaler in an amount less than the fair market value determined under section 7 of this chapter;

must comply with this chapter. A successor's designee must also comply with this chapter.

Sec. 6. The successor shall notify the existing wholesaler of the successor's intent not to appoint the existing wholesaler for all or a part of the existing wholesaler's territory for the product. The successor shall mail the notice of termination by certified mail, return receipt requested, to the existing wholesaler. The successor shall include in the notice the names, addresses, and telephone numbers of the successor's designees.

Sec. 7. A successor's designee shall negotiate with the existing wholesaler to determine the fair market value of the existing wholesaler's right:

(1) to distribute the product in the existing wholesaler's territory immediately before the successor acquired rights to the product under section 5 of this chapter; and

(2) as determined in an arms length transaction entered into without duress or threat of termination of the initial wholesaler's right described in subdivision (1).

Sec. 8. The existing wholesaler shall continue to distribute the product until payment of the compensation agreed to under section 7 of this chapter or awarded under section 11 of this chapter is

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received.

Sec. 9. (a) The successor's designee and the existing wholesaler shall negotiate in good faith. If the parties fail to reach an agreement not later than thirty (30) days after the existing wholesaler receives the notice under section 6 of this chapter, the successor's designee or the existing wholesaler may send a written notice to the:

(1) other party; and

(2) American Arbitration Association or its successor in interest;

declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules.

(b) Notice of intent to arbitrate shall be sent, as provided in subsection (a), not later than thirty-five (35) days after the existing wholesaler receives notice under section 6 of this chapter. The arbitration proceedings shall conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party.

Sec. 10. (a) The arbitration shall be conducted in the city within Indiana that:

(1) is closest to the existing wholesaler; and

(2) has a population of more than fifty thousand (50,000).

(b) The arbitration shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Sec. 11. The arbitrator's award must be monetary only and may not enjoin or compel conduct. The arbitration is instead of all other remedies and procedures.

Sec. 12. (a) The cost of the arbitrator and any other direct costs of the arbitration shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(b) The arbitrator shall render a decision not later than thirty (30) days after the conclusion of the arbitration unless this time period is extended by mutual agreement of the parties or by the arbitrator. The decision of the arbitration is final and binding on the parties. Under no circumstances may the parties appeal the decision of the arbitrator.

(c) A party who fails to participate in the arbitration hearings

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1 waives all rights the party would have had in the arbitration and
 2 is considered to have consented to the determination of the
 3 arbitrator.

4 **Sec. 13. If the existing wholesaler does not receive payment from**
 5 **the successor of the compensation under section 7 or 11 of this**
 6 **chapter not later than thirty (30) days after the date of the**
 7 **settlement or arbitration award:**

8 (1) the existing wholesaler shall remain the distributor of the
 9 product in the existing wholesaler's territory to at least the
 10 same extent that the existing wholesaler distributed the
 11 product immediately before the successor acquired rights to
 12 the product; and

13 (2) the existing wholesaler is not entitled to the settlement or
 14 arbitration award.

15 **Sec. 14. Nothing in this chapter shall be construed to limit or**
 16 **prohibit good faith settlements voluntarily entered into by the**
 17 **parties.**

18 **Sec. 15. Nothing in this chapter shall be construed to give the**
 19 **existing wholesaler or a successor wholesaler any right to**
 20 **compensation if the existing wholesaler or successor wholesaler is**
 21 **terminated by the primary source of supply or predecessor source**
 22 **supplier either for failure to comply with any provision in the**
 23 **agreement to distribute the product or in accordance with**
 24 **IC 7.1-5-5-9.**

25 SECTION 23. IC 7.1-4-4.1-3 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~The following~~
 27 **A biennial license fee of fifteen dollars (\$15)** is imposed for an
 28 employee's permit ~~(1) Five dollars (\$5)~~ if the permit is used only to
 29 perform volunteer service that benefits a nonprofit organization. ~~(2)~~
 30 **Thirty dollars (\$30)** if subdivision ~~(1)~~ **does not apply.** The term of a
 31 biennial employee's license is two (2) years.

32 SECTION 24. IC 7.1-4-4.1-4 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. A ~~biennial~~
 34 license fee of ~~twenty one hundred dollars (\$20)~~ **(\$100)** is imposed for
 35 a salesman's license. The term of a ~~biennial~~ salesman's license is ~~two~~
 36 ~~(2)~~ **four (4)** years.

37 SECTION 25. IC 7.1-4-4.1-9 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) This section
 39 applies to the following ~~seasonal or annual~~ **biennial** permits:

- 40 (1) Beer retailer's permit.
- 41 (2) Liquor retailer's permit.
- 42 (3) Wine retailer's permit.

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- (4) One-way permit.
- (5) Two-way permit.
- (6) Three-way permit.
- (7) Airplane beer permit.
- (8) Airplane liquor permit.
- (9) Airplane wine permit.
- (10) Boat beer permit.
- (11) Boat liquor permit.
- (12) Boat wine permit.
- (13) Dining car beer permit.
- (14) Dining car liquor permit.
- (15) Dining car wine permit.
- (16) Hotel seasonal permit.
- (17) Supplemental retailer's permit.

(b) The commission shall charge a single fee for the issuance of any combination of retailer's permits issued for the same location or conveyance. Except as provided in sections 10 and 11 of this chapter, the fee is equal to the sum of the amount determined under subsection (c) and the amount determined under subsection (d).

(c) ~~An annual~~ **A biennial** permit fee in the following amount is imposed on a retailer:

- (1) ~~Two hundred fifty dollars (\$250);~~ **Seven hundred fifty dollars (\$750)**, if the retailer serves only beer or only wine.
- (2) ~~Five hundred dollars (\$500);~~ **One thousand two hundred fifty dollars (\$1,250)**, if the retailer serves both beer and wine but no liquor.
- (3) ~~Seven hundred fifty dollars (\$750);~~ **Two thousand dollars (\$2,000)**, if the retailer serves beer, wine, and liquor.

(d) ~~An additional fee in the following amount of three thousand dollars (\$3,000)~~ is imposed on a retailer

- (1) ~~Two hundred fifty dollars (\$250);~~ if the retailer under the authority of ~~IC 7.1-3-16.5~~ sells food and any combination of beer, wine, or liquor on Sunday.
- (2) ~~one thousand five hundred dollars (\$1,500)~~ if the retailer who is not under the authority of ~~IC 7.1-3-16.5~~, sells any combination of beer, wine, or liquor on Sunday.

SECTION 26. IC 7.1-4-4.1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies to the following permits:

- (1) Beer dealer's permit.
- (2) Liquor dealer's permit.
- (3) Malt dealer's permit.

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(4) Wine dealer's permit.

(b) The commission shall charge a single fee for the issuance of any combination of dealers' permits issued for the same location. The fee is equal to the sum of the amount determined under subsection (c).

(c) ~~An annual~~ **A biennial** permit fee in the following amount is imposed on a dealer:

(1) ~~Two hundred fifty dollars (\$250);~~ **Seven hundred fifty dollars (\$750)**, if the dealer sells only beer, only liquor, or only wine.

(2) ~~Five hundred dollars (\$500);~~ **One thousand two hundred fifty dollars (\$1,250)**, if the dealer sells:

(A) both beer and wine but no liquor;

(B) both wine and liquor but no beer; or

(C) both beer and liquor but no wine.

(3) ~~Seven hundred fifty dollars (\$750);~~ **Two thousand dollars (\$2,000)** if the dealer sells beer, wine, and liquor.

SECTION 27. IC 7.1-4-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. ~~Collection of Annual License Fees.~~ The chairman shall collect the required ~~annual~~ license fee paid in connection with the issuance of a brewer's permit, a beer wholesaler's permit, a temporary beer permit, a dining car permit of any type, a boat permit of any type, a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a vintner's permit, a farm winery permit, a farm winery brandy distiller's permit, a wine wholesaler's permit, a wine bottler's permit, a temporary wine permit, a salesman's permit, and a carrier's alcoholic permit.

SECTION 28. IC 7.1-4-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b), the chairman and the department shall deposit the money collected under sections 1, 2, and 3 of this chapter daily with the treasurer of state, and not later than the fifth day of the following month shall cover: ~~them~~

(1) **forty percent (40%) of the money collected under section 1 of this chapter into the enforcement and administration fund established under IC 7.1-4-10-1; and**

(2) **sixty percent (60%) of the money collected under section 1 of this chapter and money collected under sections 2 and 3 of this chapter into the state general fund of state for state general fund purposes.**

(b) The chairman and the department shall deposit ~~the~~ **all** money collected under IC 7.1-2-5-3, IC 7.1-2-5-8, IC 7.1-3-17.5, IC 7.1-3-17.7, IC 7.1-3-22-9, and IC 7.1-4-4.1-5 daily with the treasurer

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of state, and not later than the fifth day of the following month shall cover ~~them~~ **the money** into the enforcement and administration fund established under IC 7.1-4-10-1.

SECTION 29. IC 7.1-4-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. ~~Collection of Annual License Fees~~. The chairman shall collect the required ~~annual~~ **biennial** license fee paid in connection with the issuance of a beer retailer's permit, a beer dealer's permit, a liquor retailer's permit, a supplemental caterer's permit, a liquor dealer's permit, a wine retailer's permit, and a wine dealer's permit, and a supplemental retailer's permit.

SECTION 30. IC 7.1-4-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Fees ~~Deposited in Excise Fund~~. **(a) Except as provided in subsection (b),** the chairman shall deposit the monies collected under the authority of this chapter daily with the treasurer of the state, and not later than the fifth day of the following month shall cover them into the "excise fund" to be distributed as provided in this chapter.

(b) The chairman shall deposit the money received from the collection of the fees for a three-way permit under IC 7.1-3-20-16 daily with the treasurer of state, and not later than the fifth day of the following month shall transfer the money into the enforcement and administration fund of the commission under IC 7.1-4-11.

SECTION 31. IC 7.1-4-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~Distribution to State General Fund~~. ~~Thirty-three and one-third percent (33 1/3%)~~ **Twenty-five percent (25%)** of the ~~monies~~ **money** in the excise fund shall be deposited in the state general fund on the first day of June and the first day of December of each year.

SECTION 32. IC 7.1-4-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. ~~Distribution to Cities and Towns~~. ~~Sixty-six and two-thirds percent (66 2/3%)~~ **Twenty-five percent (25%)** of the ~~monies~~ **money** in the excise fund shall, upon warrant of the state auditor, be paid into the general fund of the treasury of the city or town in which the retailer's or dealer's licensed premises are located. The money shall be paid to the treasurer of the county in which the retailer's or dealer's premises are located if they are located outside the corporate limits of a city or town.

SECTION 33. IC 7.1-4-9-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. Fifty percent (50%) of the money in the excise fund shall be deposited in the enforcement and administration fund under IC 7.1-4-10 on the first day of June**

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1 **and the first day of December of each year.**

2 SECTION 34. IC 7.1-4-11-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The sums
4 realized from the collection of the biennial license fees imposed by
5 IC 7.1-4-4.1-3 **and IC 7.1-4-4.1-5** shall be paid first, and are hereby
6 appropriated, to the state excise police retirement fund. The board of
7 trustees of the public employees' retirement fund shall determine the
8 amount to be appropriated. The amount to be appropriated shall be
9 sufficient, when added to the funds already held by the retirement fund,
10 for the payment of benefits to enforcement officers to pay the aggregate
11 liability of the retirement fund for the payment of benefits and
12 administration costs to the end of the fiscal year. The appropriation of
13 funds shall be credited to the state excise police retirement fund in
14 equal installments at the end of each month during each fiscal year.

15 SECTION 35. IC 7.1-4-11-2.5 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. The chairman shall deposit**
18 **the money received from the collection of the fees for a three-way**
19 **permit under IC 7.1-3-20-16 daily with the treasurer of state, and**
20 **not later than the fifth day of the following month shall transfer the**
21 **money into the enforcement and administration fund.**

22 SECTION 36. IC 7.1-5-5-7 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) It is unlawful
24 for a permittee in a sale or contract to sell alcoholic beverages to
25 discriminate between purchasers by granting a price, discount,
26 allowance, or service charge which is not available to all purchasers at
27 the same time. However, this section does not authorize or require a
28 permittee to sell to a person to whom he is not authorized to sell under
29 this title.

30 (b) A premises that operates at least two (2) restaurants that are
31 separate and distinct from each other on the same premises may
32 provide for a different schedule of prices in each restaurant if each
33 restaurant conforms to all other laws and rules of the commission
34 regarding pricing and price discrimination in its separate and distinct
35 areas.

36 (c) This section does not apply to the holder of an excursion and
37 adjacent landsite permit that complies with IC 7.1-3-17.5-6.

38 **(d) Notwithstanding subsection (a), a beer wholesaler may offer**
39 **a special discount price to a beer dealer or beer retailer for beer or**
40 **flavored malt beverage, if the beer or flavored malt beverage:**

41 **(1) is a brand or package the beer wholesaler has**
42 **discontinued; or**

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(2) will expire in not more than:

(A) twenty (20) days for packaged beer or packaged flavored malt beverage; and

(B) ten (10) days for draft beer or draft flavored malt beverage.

(e) The special discount under subsection (d) only applies to beer or flavored malt beverage that will expire and be subject to removal from retailer or dealer shelves in accordance with the primary source of supply's coding data clearly identified on the container.

(f) Any beer or flavored malt beverage sold at a special discount price under subsection (d) shall be accompanied by an invoice clearly designating, in addition to all other information required by law, all the following information:

(1) The date of delivery.

(2) The expiration date of each brand, package type, and quantity delivered.

(3) The per unit price for each package.

SECTION 37. IC 7.1-5-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. ~~Un equitable Termination of Contract Prohibited~~. It is unlawful for a beer wholesaler or a brewer in this state, or a brewer or other person located outside this state who sells beer to a permittee in this state for the purpose of importation and resale within this state **primary source of supply** to:

(1) coerce, or attempt to coerce, or persuade a beer wholesaler to enter into an agreement, or to take an action, which will violate, or tend to violate, a provision of this title or of the rules and regulations of the commission; or,

(2) cancel or terminate an agreement or contract between a beer wholesaler and a ~~brewer~~ **primary source of supply** for the sale of beer, unfairly and without due regard for the equities of the other party.

SECTION 38. IC 7.1-5-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as provided in ~~subsection~~ **subsections (c) and (d)**, it is unlawful for a manufacturer of alcoholic beverages or a permittee authorized to sell and deliver alcoholic beverages to:

(1) give, supply, furnish, or grant to another permittee who purchases alcoholic beverages from him a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, lease, or rental of premises; or

(2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f), have

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a business dealing with the other permittee.

(b) This section shall not apply to the sale and delivery and collection of the sale price of an alcoholic beverage in the ordinary course of business.

(c) If the promotional program is approved under the rules adopted by the commission and is conducted in all wholesaler establishments through which the manufacturer distributes alcoholic beverages in Indiana, a manufacturer of alcoholic beverages may award bona fide promotional prizes and awards to any of the following:

(1) A person with a wholesaler's permit issued under IC 7.1-3.

(2) An employee of a person with a wholesaler's permit issued under IC 7.1-3.

(d) A manufacturer may offer on a nondiscriminatory basis bona fide incentives to wholesalers when the incentives are determined based on sales to retailers or dealers occurring during specified times for specified products. The incentive may be conditioned on the wholesaler selling a:

(1) specified product at a specified price or less than a specified price; or

(2) minimum quantity of a specified product to a single customer in a single transaction.

The incentive may not be conditioned on a wholesaler having total sales of a minimum quantity of a specified product during the applicable period.

SECTION 39. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 7.1-3-1-18; IC 7.1-3-16.5-3; IC 7.1-3-16.5-4; IC 7.1-3-19-5; IC 7.1-3-19-6; IC 7.1-3-19-7; IC 7.1-3-19-14.

SECTION 40. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy and Veterans Affairs, to which was referred House Bill 1406, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1406 as introduced.)

ALDERMAN, Chair

Committee Vote: yeas 10, nays 0.

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